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REVIEWS.

Das Internationale Civil und Handelsrecht auf Grund der Theorie, Gesetzgebung und Praxis. By F. Meili, Zurich, 1902. *International Civil and Commercial Law*, etc., by F. Meili. Translated and Supplemented with additions of American and English Law. by Arthur K. Kuhn. The MacMillan Company, New York, 1905.

Das Internationale Civilprozessrecht auf Grund der Theorie, Gesetzgebung und Praxis. By F. Meili. Parts I and II. Zurich, 1904.

Professor Meili, in these volumes, treats of whatever belongs to Private International Law, (or as he prefers to call it, International Private Law), considered with reference to civil relations, in two aspects. The first work deals with substantive rights; the last describes remedial procedure. Each shows wide reading and close thought.

Dr. Meili has been a prolific author of late years, and this may account for a certain incompleteness of statement which is sometimes noticeable. Thus in the volume devoted to substantive law he begins by observing that the problems to be solved are approached in any country in two directions, namely, that which views the obligations of foreigners and that which views the obligations of its own citizens in foreign lands. The third point of view—that concerning the rights growing out of foreign transactions, whether the parties to it be aliens or citizens—is left here unnoticed. It is nevertheless, as is fully recognized later in the work (Sec. 34 *et seq.*), the main and controlling point of view, according to the doctrines of modern political science, as formulated by Savigny and repeated or re-phrased by von Bar and Schaffner.

The author does not mince words in discussing opposing theories. The positions of Pütter and Pfeifer for instance as to the *lex fori* are contemptuously passed by with the remark that both treated in a careless manner a topic that neither understood nor sought to understand.

As to the question whether national law or that of the domicile should be adopted, as the ordinary test of personal rights, Dr. Meili, following lines indicated in his address before the St. Louis points to the policy and institutions of Congress of Jurists in 1904, his country as indicating a *via media*. As to some objects he would accept the one; as to others the other (Sec. 45). To apply it to every case would, he thinks, be to bring back the system of legal chaos obtaining in the dark ages, when five men might live in the same place, each subject to a different law and yet subject to the same sovereign (Sec. 17).

He has no patience with the sciolists who would aim at the general unification of the laws of different countries. On a few subjects they can be the same. On most it is enough to settle which of several differing laws shall be applied to a particular case. The work of the Hague Conferences of 1893, 1894 and 1900 in this direction is described at some lengths and contrasted with the comparatively abortive attempts of South American Congresses of a similar character—abortive because insisting too strongly on absolute uniformity. In saying, however, that the treaties framed by that held at Montevideo in 1889 were only ratified by Uruguay, he is in error. Before the close of 1894 they had also been ratified by Peru, Paraguay and the Argentine Republic. The text of the three Hague treaties on marriage, divorce and guardianship, which are now in force between ten European powers, is given in the appendix to Mr. Kuhn's translation.

The latter has done his work with care, and very creditably, in view of the difficulties to be encountered. Occasionally a harsh term creeps in which hardly carries the author's thought, as where (Sec. 15) the *jus gentium* is said to represent a complex of strange views of private law; "strange" being here an infelicitous substitution for "foreign." So an attempt to reduce to a word the description of a complicated subject sometimes tends to obscurity, as where (Sec. 66) reference is made to the great liberty accorded by England and America to foreign corporations as to entering "into legal relations in the internal state;" "internal" being here used to denote the country (being foreign to the corporation) which is the seat of the transaction, or possibly (cf. p. 546) the *lex fori*. A few errors in proof revision are to be regretted, as where (p. 228) "changeableness" is used where "unchangeableness" was intended.

Discriminating citations of American authorities added by Mr. Kuhn are incorporated in the text of his translation, and with their aid the work will be a useful manual to American students.

It avoids the diffuseness of many writers on this subject, and its propositions are generally both clear and compact. A valuable feature is the concise statements of the positions taken by leading authors, and by congresses and learned societies, down to the opening year of the present century. In revising Mr. Kuhn's work, Dr. Meili has taken the opportunity to refer in this manner to much that has been done and published in 1903 and 1904.

The latest of these books, that treating of *Civilprozessrecht*, proceeds on a less traveled path, and may be said to be a supplement to the other. It is a hand-book of practice in three parts, for the lawyer who has to prosecute a claim abroad or to present before the courts of his own country one arising out of a foreign transaction. Such remedies as might be open to him are described at length, with relation to mesne process, jurisdiction, pleadings, evidence, judgment and execution. The first part deals with general considerations; the second with particulars; and the third (not yet published) is to be confined to final judgment and process.

The author cites an important decision (p. 35) of the court of appeals at Rome, given in 1881, to effect that treaties become the law of each of the contracting powers and magistrates have full right to recognize their effect when they are invoked in the support of private rights. This, for Italy, puts a treaty by judicial construction where our own Constitution puts it in express terms. It is a reasonable deduction from the modern practice requiring parliamentary ratification of treaties, which now prevails generally in Europe.

Considerable space is given to methods of extra-territorial service of process by the aid of foreign judicial officers, a proceeding analogous to that upon a rogatory commission. The treaties between various European powers as to jurisdiction of suits affecting foreigners, whether natural or artificial persons, are described at length, as well as the provisions of their codes. International arbitration receives ample consideration (Sec. 44).

A part of the book which is of special practical importance to American lawyers is the discussion of the rules affecting written evidence produced from abroad (Sec. 561, *et seq.*). There is a certain trend of Continental European opinion towards giving it such weight as it would be entitled to within the jurisdiction from which it comes, but the Institute of International Law, in resolutions cited by the author and adopted in 1898, while accepting this rule as to matters of form, favored the *lex fori* as the standard of probative force.

No lawyer can ever safely assume the conduct of a cause in a foreign country. He must rely on local counsel for the ultimate direction of its course; but a book like that under review will help him greatly, both in giving advice to such an associate and in understanding advice given by him. It is a good guidepost, and it is good to have guideposts as well as guides.

S. E. B.

Roman Water Law. Translated from the Pandects of Justinian.

By E. F. Ware, of the Topeka Bar. The West Publishing Co., St. Paul, Minn. Half morocco, pages, 160.

This is an interesting monograph on the subject of the Roman law concerning fresh water. It is composed of excerpts from the *Corpus Juris Civilis* (particularly the Digest), which bear in any way upon this subject. Primarily it is a translation of these excerpts, which have been literally translated with care. This material from the Roman law has been arranged by the author in the following topics: rivers, rain water, springs, drip, waterworks, sewers, reservoirs, irrigation, water-rights, right of way and the appropriate remedies and procedure of the civil laws as to the same. It is an advantageous contribution to the literature in English or Roman law.

It is supplemented by the Spanish law on the same subject as found in the *Siete Partidas*, which was their law when America was